UNITED NATIONS

General Assembly

FORTY-SEVENTH SESSION

Official Records

SIXTH COMMITTEE
8th meeting
held on
Thursday, 1 October 1992
at 10 a.m.
New York

SUMMARY RECORD OF THE 8th MEETING

Chairman: Mr. ZARIF (Islamic Republic of Iran)

later: Mrs. FLORES (Uruguay)

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92-56790 5974S (E)

Distr. GENERAL
A/C.6/47/SR.8
12 October 1992
ENGLISH
ORIGINAL: FRENCH

The meeting was called to order at 10.20 a.m.

AGENDA ITEM 136: PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT (A/47/328, A/C.6/47/3, A/C.6/47/L.2)

1. The CHAIRMAN said that Croatia had joined the sponsors of the draft resolution on the protection of the environment in times of armed conflict (A/C.6/47/L.2).

2. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the report of the Secretary-General entitled "Protection of the environment in times of armed conflict" (A/47/328), said that the observer for the International Committee of the Red Cross (ICRC) would provide the Sixth Committee with further information and clarification, including the conclusions of ICRC as to the impact on the issue under consideration of the United Nations Conference on Environment and Development and the Second Review Conference of the Parties to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976.

3. Mr. SANDOZ (Observer for the International Committee of the Red Cross) said that the resurgence of interest in the issue of protection of the environment in times of armed conflict was attributable to a new awareness of the broader problems of the environment and to the sight of the particularly serious damage inflicted on the environment in recent conflicts.

4. ICRC had been studying that question since the 1970s in the context of work that had led, for the first time in international humanitarian law, to the introduction of provisions expressly protecting the environment. Acting on the mandate it had received from the international community "to work for the understanding and dissemination of international humanitarian law applicable in armed conflicts and to prepare any development thereof" (art. 5, para. 2 g of the Statutes of the International Red Cross and Red Crescent Movement), a mandate which had been confirmed by the General Assembly in its decision 46/417, by the United Nations Conference on Environment and Development and, just recently, by the Second Review Conference of the Parties to the ENMOD Convention of 1976, ICRC had undertaken a general review of the problem. To conduct the review, it had assembled a group consisting of military experts and experts on the environment, environmental law and international humanitarian law.

5. Although the number and complexity of the issues identified had made it impossible to deal with them comprehensively, ICRC thought that a number of points could already be made. First, before even thinking about strengthening international humanitarian law, the international community must recognize that all wars inflicted damage on the environment even if the rules of war were respected.

6. Second, while strict adherence to international humanitarian law would undeniably reduce such damage, efforts to enforce the law could not replace efforts to prevent armed conflicts.

7. Third, the real problem was not so much that the norms were inadequate but rather that people were ignorant of, or disregarded them. International humanitarian law was not limited to provisions dealing expressly with the natural environment. The prohibition of attacks likely to cause "widespread, long-term and severe" damage to the environment had certainly given it a new dimension. The interest at stake was not just long-term interests of each of the Parties involved but the fate of the entire planet - the common heritage of mankind. The experts had stressed the importance in that respect of certain principles: only military targets might be the object of attacks; collateral damage must be reduced as much as possible and a military target must not be attacked if the foreseeable collateral damage was disproportionate to the expected military advantage.

8. Fourth, clarification was required regarding the applicability of the norms in question. Specifically, it was necessary to determine which norms were binding only on the parties to the instrument involved; which were part of customary law or in the course of becoming so; which were subject to the famed Martens clause, whereby civilians and combatants remained under the protection and authority of the principles of international law derived from established customs, from the principles of humanity and from the dictates of public conscience; and whether, in an internal conflict, a State could commit, against its own people and on its own territory, acts that were prohibited in an international conflict.

9. Fifth, the recognition that it was not the norms themselves which were at fault but the way they were implemented, should not be used as a pretext for inaction. Considerable effort was needed to increase awareness of international humanitarian law. If they were to be truly applied the norms must be deeply rooted - must become as natural a reflex as the handling of a gun. In that light, the plans for drawing up military instructions dealing with the respect of the environment seemed a particularly useful, practical measure.

10. ICRC had applied itself assiduously to the task assigned to it; it expected to reach conclusions and to formulate specific proposals in 1993. Far from seeing its report as an end in itself, ICRC considered it a basis for enabling the international community as a whole to strengthen the protection of the environment in times of armed conflict.

11. Mr. ABU ODEH (Jordan) said that, in proposing the inclusion in the agenda of the forty-sixth session of the General Assembly of an item entitled "Exploitation of the environment as a weapon in times of armed conflict and the taking of practical measures to prevent such exploitation", his delegation had not intended to revive old quarrels in the Sixth Committee, or to rewrite

(Mr. Abu Odeh, Jordan)

history. The Jordanian initiative was indicative of two basic truths, namely, that the preservation of humanity necessitated the existence of legislation for environmental protection, as well as the support of nations for international efforts to safeguard human rights and world peace in the aftermath of the human suffering caused by war. The sole purpose was to derive the right lessons from experience so as to set the appropriate targets for the future, and to contribute to ensuring a safer world for all by preventing damage to the environment.

12. He thanked ICRC for its report on the subject, and pointed out that his delegation agreed that at that early stage, there was a need to focus on the elaboration and implementation of existing laws. Initiating a new process of codification of rules could be counterproductive. To open a debate in the Sixth Committee before taking note of the ICRC's findings, including the work of the twenty-sixth International Conference of the Red Cross and Red Crescent, would be a waste of effort.

13. In the interest of promoting compromise, his delegation had submitted draft resolution A/C.6/47/L.2, along with the delegations of Cyprus, Lebanon, Morocco, the United States of America and Yemen. The draft resolution urged States to comply with the existing international law applicable to the protection of the environment in times of armed conflict, to sign the relevant international conventions, and to incorporate the relevant provisions into their military manuals. His delegation had also submitted, along with the United States delegation, a compendium (A/C.6/47/3) of provisions of existing international law that provided protection for the environment during armed conflicts, to be used as an aid in the consideration of the item.

14. Mr. HORMAZABAL (Chile) pointed out that protection of the environment in times of armed conflict was far from being a purely abstract notion or a new concern for specialists; rather, it was a question which needed to be addressed because the means devised by man to overcome natural obstacles were being put to improper use, the most recent example being the oil spills in the Persian Gulf.

15. History had shown that man had not always heeded the voice of reason. None the less judging, for example, from the terms of the Declaration of St. Petersburg of 1868, which provided that the only legitimate object which States should endeavour to accomplish during war was to weaken the military forces of the enemy, the 1982 World Charter for Nature, the 1907 Hague Convention respecting the Laws and Customs of War on Land, the Geneva Conventions of 1949 and the additional Protocols thereto, and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, the international community had sought to learn from its bitter experiences and to find legal solutions to the various phenomena related to armed conflict, including the degradation of the environment.

(Mr. Hormazabal, Chile)

16. Most specialists considered that there was no need to draw up a new set of international rules on the subject. Indeed, the protection of the environment in times of armed conflict was based on express rules, on fundamental principles of humanitarian law, on the rules of international environmental law and on certain provisions relating to international responsibility. While there were still some gaps that needed to be filled, the real need was to enhance the effectiveness of the existing provisions. Chile, for its part, had signed the Hague Convention of 1907, and was a party to the Geneva Conventions of 1949. Furthermore, pursuant to the provisions of General Assembly resolution 45/38, of 28 November 1990, his Government had deposited, on 24 April 1991, the instruments of ratification of the additional Protocols to the Geneva Conventions of 1949, along with a declaration stating that it recognized the competence of the International Fact-Finding Commission provided for in article 90 of Additional Protocol I. His delegation wished to take the opportunity to urge States that had not yet done so to sign those instruments as soon as possible. His Government trusted that there would soon be more than 30 declarations of acceptance of the competence of the Fact-Finding Commission. The 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, was currently being considered by the Chilean Senate, and Chile would probably accede to it very soon.

17. Chile was also a party to other international agreements aimed at safeguarding human life and the environment. After mentioning some examples, he said that his Government attached special importance to the Antarctic Treaty of 1959, which his Government had ratified in 1961; part of that region was under Chilean sovereignty. Finally, Chile, as well as Argentina, Brazil and Mexico, had taken measures to implement the Treaty of Tlatelolco of 1967; Chile had ratified the Treaty in 1974. All those international treaties enjoyed constitutional status under Chilean domestic law, and thus had been assimilated into the provisions of the fundamental law of the country.

18. The time had come for all countries to redouble their efforts on behalf of peace as a means of safeguarding the environment and its principal beneficiary, mankind. It was indeed possible to mobilize resources to put an end to injustice, eliminate poverty and safeguard the environment; the only requirement was that everyone should put their heart and mind to it.

19. Mr. STRAUSS (Canada) welcomed the inclusion in the agenda of the question of the protection of the environment in time of armed conflict, which remained timely. Noting the conclusion in September 1992 of the Second Review Conference of the Parties to the Convention on the Prohibition of Military and Any Other Hostile Use of Environmental Modification Techniques, he announced that Canada was giving thought to making a request for the convening of a consultative committee of experts to clarify the scope and application of its provisions.

(Mr. Strauss, Canada)

20. His delegation welcomed the ongoing work of the International Committee of the Red Cross (ICRC) in that field. In 1991, the ICRC had participated in an international meeting of experts in Ottowa which had concluded that the customary laws of war, in reflecting the dictates of public conscience, included a requirement to avoid unnecessary damage to the environment, a principle drawn from Marten's clause, found in the preamble to the Hague Conventions of 1899 and 1907, which provided that inhabitants and belligerants remain under the protection and rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience. An important evolution was thus taking place which reflected the importance of the ecological point of view and which should be brought to bear on other questions, such as that of proportionality (the need to strike a balance between the protection of the environment and the needs of war) or that of the distinction between military and non-military objectives. Under the same principle, the environment as such should not be the object of direct attack, and his delegation would like to see that point reflected in the resolution to be adopted after discussion of the item.

21. Canada considered the question of the applicability of the rule of international environmental law in times of armed conflict one of the areas calling for further examination. In that respect it shared the view of the ICRC Meeting of Experts in Geneva in April 1992, which had also called for increased clarification and dissemination of international law on the subject. The paper circulated by the United States and Jordan (A/C.6/47/3) was a valuable contribution in that respect and the rules and principles it contained should be kept under review. His delegation also supported the retention of the item on the agenda for the forty-eighth session of the General Assembly.

22. Although further clarification and dissemination were important elements in ensuring the effective protection of the environment during armed conflict, nothing could substitute for the scrupulous observance of those rules and the adherence of the greatest possible number of countries to the existing international humanitarian law instruments.

23. Mr. MARTINEZ GONDRA (Argentina) deplored the fact that the environment had been used for military purposes in several recent international armed conflicts and that damaging consequences had resulted not only for the environment but for human beings. The belligerents engaged in an armed conflict, whether international or non-international, should always bear in mind that the protection of the environment affected the well-being of humanity as a whole. They should therefore use those means which were least apt to cause damage to the environment, damage for which they would be responsible. Just as the closing years of the nineteenth century had marked the beginning of the codification of the law of war, it was to be hoped that the last decade of the twentieth century would witness the establishment of an effective system of protection of the environment in time of armed conflict.

(Mr. Martinez Gondra, Argentina)

24. While the question of the protection of the environment in peacetime had attracted the attention of the international community from the end of the Second World War, concern for the environment in time of armed conflict was much more recent, as it had not been expressed in either the Hague regulations of 1907, the Geneva Conventions of 1949 or the 1972 Stockholm Conference on the Environment. With respect to Additional Protocol I of 1977, the fact that it could be interpreted in many ways weakened many of its provisions.

25. His delegation welcomed the change now taking place and the increasing interest in the protection of the environment in time of armed conflict, as was shown, for example, by principle 24 of the Rio Declaration on Environment and Development, or the conclusions of the Second Review Conference of the Parties to the Convention on the Prohibition of Environmental Modification Techniques of 1976, which was held in September 1992. It also welcomed the expressed intention of the Red Cross to continue its effort to widen existing law, to convene other meetings of experts to examine specific unresolved matters and to work out a series of guidelines on which military manuals could be based.

26. To raise the question of the application of existing law was to express the wish that the largest possible number of States become parties to the treaties in force. The possibility should also be considered of establishing a control mechanism for cases of serious violations such as the International Fact-Finding Commission provided for by Additional Protocol I or the Advisory Committee of Experts provided for by the 1976 Convention on the Prohibition of Environmental Modification Techniques. Machinery of that kind existed for human rights and played a very useful role.

27. His delegation hoped that the work of clarifying the existing rules would continue in order to establish their applicability in time of armed conflict. Although the Red Cross and other bodies could play a useful part, it was the opinion of Governments that should provide the necessary guidance.

28. Mr. RYDBERG (Sweden), speaking on behalf of the five Nordic countries, said that the Gulf conflict, by revealing the extent of the environmental damage which a modern war could cause, had brought the issue of the protection of the environment in times of armed conflict to the fore and had prompted reconsideration of existing legal rules.

29. While everyone seemed to agree that legal rules to protect the environment did exist and that the environment would undoubtedly be better protected if those rules were better known and more widely implemented, legal experts nevertheless seemed divided, some being satisfied with the existing framework, and others stressing its obscurities and insufficiencies.

30. The Nordic countries welcomed the timely inclusion of the item entitled "Protection of the environment in times of armed conflict" in the agenda of the forty-seventh session of the General Assembly in view of the principles,

(Mr. Rydberg, Sweden)

particularly principle 24, contained in the Rio Declaration adopted by the United Nations Conference on Environment and Development in 1992.

31. The international community had long been concerned about environmental degradation in times of war, as could be seen from the ancient prohibition on the burning of croplands and the poisoning of wells. A principle stated in the Hague Regulations of 1907 - that the choice of means of injuring the enemy was not limitless - was not irrelevant to the protection of the environment. More specifically, that same concern had been expressed at the United Nations Conference on the Environment (Stockholm, 1972) and, by generating a concerted effort, it had given birth in 1976 to the ENMOD Convention. The Second Review Conference of the Parties to that Convention had been held in September 1992 and, since the Convention's scope gave rise to differing interpretations, several States Parties had proposed the establishment of a clarification mechanism in the form of a consultative committee of experts. The Nordic countries supported that proposal.

32. During the negotiation of Additional Protocol I of 1977 to the Geneva Conventions of 1949 several problems of interpretation had emerged, in particular with regard to article 35, paragraph 3, which stated that "It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment". The vagueness of the expression "widespread, long-term and severe damage", used again later in article 55, still gave rise to differing interpretations, which diminished the scope of the provision. There were other provisions of Additional Protocol I designed to safeguard the environment in armed conflicts, but many of them were also vague.

33. Existing law on the topic rested on two pillars: humanitarian law and environmental law. It was not clear to what extent existing rules and accepted principles in those two branches of international law covered the same activities, but other areas of international law must also be taken into account, for example the law of the sea, in situations where the environment affected was part of the global commons. The two branches of international law in question were not alien to each other, for many principles of humanitarian law had a corresponding rule in environmental law. For example, the rule stated in article 91 of Additional Protocol I, according to which violators of the Geneva Conventions or the Protocol were liable to pay compensation, could be compared with the "polluter pays" principle.

34. Lastly, the Nordic countries were pleased to see the question of the protection of the environment in times of armed conflict receive the whole attention of the international community and they hoped for a more detailed examination which would make it possible to remedy the vagueness and imprecision of many existing provisions of humanitarian law and to establish the extent to which the rules of international environmental law were applicable in times of armed conflict. Environmental protection would have everything to gain therefrom.

35. Mrs. Flores (Uruguay), Vice-Chairman, took the Chair.

36. Mr. CEDE (Austria) said that the urgency and universality of the item under consideration had been recognized immediately upon its inclusion in the agenda at the request of Jordan: the burning oil fields in the Persian Gulf spoke for themselves. The legal profession, and in particular experts in international law, had suddenly realized that the protection of the environment in times of armed conflict required more than just a fresh look: international law contained remarkable lacunae, there were few instruments, and the rules were scattered about among the Hague Regulations of 1907, the four Geneva Conventions of 1949 and the Additional Protocols of 1977. The universally accepted norms of customary law were few in number and indeed very general in nature. There was therefore an undeniable need to identify and develop a regime for protection of the environment in times of armed conflict.

37. The present legal regime had a number of shortcomings, of which at least five came immediately to mind: under present law damage inflicted on ecosystems in times of armed conflict must be avoided only when it might cause harm to human health; the principle of proportionality between the military necessity of an action and its possible detrimental effects on the environment was usually applied in favour of military necessity; the concept of "collateral damage" was a means of justifying environmental disasters which seemed to be accepted just like the devastations of a hurricane; article 35, paragraph 1, of Additional Protocol I and the 1976 ENMOD Convention prohibited acts which might cause "widespread, long-lasting and severe damage to the natural environment", implying that less serious damage was authorized; lastly, there was no effective sanction against serious violations of the existing rules. Such violations might be defined as "international crimes against the environment": the draft articles of the International Law Commission concerning State responsibility did indeed place massive pollution of the air and of the seas in the category of international crimes.

38. Austria had seized the opportunities offered by international conferences to address questions of environmental protection during armed struggles and it had made several concrete proposals on the topic. At the United Nations Conference on Environment and Development and at the Second Review Conference of the Parties to the ENMOD Convention, held in Geneva in September 1992, it had proposed further limitations on what still appeared to be an insufficiently restrictive regime.

39. The General Assembly should continue its work on that important matter and keep it on the agenda of its future sessions. While it seemed that the Sixth Committee should be the main forum for the debate, other bodies too might well work on the subject, within the limits of their activities and competence, such as the United Nations Environment Programme or the International Committee of the Red Cross. But it was for the Sixth Committee to take up the challenge, which was nothing less than the improvement and expansion of the norms of international law governing the protection of the environment in times of armed conflict.

40. Mr. MOHAMMED (Nigeria) said that armed conflicts still occurred, notwithstanding serious efforts to outlaw or prevent them. The report of the Secretary-General under consideration confirmed that it was not the lack of rules of international law that was the problem, but the unwillingness of States parties to a conflict to observe them. The Geneva Conventions of 1949, the Protocols additional thereto, and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976 would appear to provide adequate safeguards.

41. Nigeria had ratified the Geneva Conventions, the Protocol additional thereto and the Convention of 1976 because it was conscious of the fact that methods of warfare were not unlimited. The natural resources of the planet, which were indispensable to human survival, must also be preserved. Nigeria, therefore, called upon the international community to make every effort to protect the environment both during times of armed conflict and in peacetime. It welcomed the Secretary-General's report and commended the efforts of ICRC in that field.

42. Mr. Zarif (Islamic Republic of Iran) resumed the Chair.

43. Mr. WOOD (United Kingdom of Great Britain and Northern Ireland), speaking on behalf of the European Community and its member States, recalled that, at the previous session of the General Assembly, the Community had raised several questions which were still pertinent. It had, for example, suggested that, in approaching the item under consideration, what was needed was a review of existing international humanitarian law and it had looked forward to examining the results of the work of ICRC. The Twenty-sixth International Conference of the Red Cross and Red Crescent, which was to have taken place in Budapest in late 1991, had been postponed and had not yet been held. Taking into account that unfortunate development, the General Assembly had requested the Secretary-General to report to it on activities undertaken in the framework of the International Red Cross. The report of the Secretary-General thus set out in detail the information received from the International Committee of the Red Cross and contained a valuable survey of existing law in the field.

44. The report began by stating two fundamental rules: first, that the right of parties to an armed conflict to choose methods or means of warfare was not unlimited; second, that the concept of proportionality must be respected. The report next reviewed the relevant provisions of the Hague Regulations of 1907 and the Geneva Convention of 1949, including the additional Protocol I, as well as other international instruments bearing directly on the protection of the environment in times of armed conflict. In addition it dealt with the question of the implementation of those texts.

45. The European Community wished to draw particular attention to the section of the report entitled "The question of implementation". First, article 146 of the fourth Geneva Convention placed each party under the obligation to search for persons alleged to have committed, or to have ordered to be committed, grave breaches of its provisions and to bring such persons to

(Mr. Wood, United Kingdom)

justice regardless of their nationality. Consideration would be given, under another agenda item, to the possible establishment of an international criminal court with jurisdiction, inter alia, in respect of war crimes. Moreover, it should be noted that the International Fact-Finding Commission under Additional Protocol I had become operational.

46. The second aspect of implementation which the Community wished to emphasize was the obligation of States Parties to spread knowledge of the law. In that connection, it was essential that military manuals should state clearly the obligations of members of the armed forces in respect of the environment. The report before the Committee should assist Governments in preparing the relevant passages of such manuals.

47. The Secretary-General also discussed the principal activities in recent years. It would be noted from paragraph 40 that, at the various meetings held in the aftermath of the Gulf conflict, generally speaking, the idea of creating an entirely new body of international rules for the protection of the environment had been ruled out. Most experts had insisted on the importance of existing law, while acknowledging that there were a number of gaps in the rules currently applicable. Those gaps were listed in paragraph 43 of the report. The experts had further emphasized the need for States to become parties to existing treaties, to observe their existing obligations and to enact the necessary domestic legislation. It should be noted that Principle 24 of the Rio Declaration also required States to protect the environment in times of armed conflict.

48. The European Community and its member States had welcomed the convening by ICRC in April 1992 of a meeting of experts to study the question. In view of its membership, that multi-disciplinary group was entitled to considerable respect. Some of its conclusions were set out in paragraphs 53 to 60 of the report and it should be noted that the experts had encouraged ICRC to carry on its work to clarify and, where necessary, develop the rules to protect the natural environment in times of armed conflict (para. 60).

49. The subsequent paragraphs of the report showed that ICRC had been able to adopt a balanced approach and that it had reservations about proposals to undertake a new process of codification. Rather, it emphasized the need to make "a particular effort to increase compliance with existing rules and to improve their implementation" (para. 62).

50. In conclusion, the States members of the European Community hoped that the General Assembly would keep the question of the protection of the environment in times of armed conflict on its agenda for future sessions.

The meeting rose at 12.05 p.m.